

OFFICIAL

Provision: HCFA-PM-95-4 (HSQB)  
June 1995

Attachment 4.35-J

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: New York

ELIGIBILITY CONDITIONS AND REQUIREMENTS

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Enforcement of Compliance for Nursing Facilities

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**Additional Remedies:** Describe the criteria (as required at §1919(h)(2)(A) for applying the additional remedy. Include the enforcement category in which the remedy will be imposed (i.e., category 1, category 2, or category 3 as described as 42 CFR 488.408).

**STATE CIVIL MONEY PENALTIES IMPOSED AS A CATEGORY 2 ENFORCEMENT REMEDY**

New York provides under Section 12 of the Public Health law a civil money penalty system which allows fining facilities for each occurrence of a deficiency. A facility may be fined up to \$2,000 for the one time occurrence of any violation of state requirements even if that violation has been corrected. It provides us with the flexibility to evaluate the deficiencies cited, to determine the existence of poor performing facilities, and to fine or not to fine a facility which has corrected the deficiencies, based on the severity and repetitiveness of the violation. Any facility with deficiencies identified with a scope and severity in box (D-L) on the remedy grid will be screened to determine whether a fine will be recommended. Effective October 1, 1990, 10 NYCRR Part 415 was revised and mirrors 42 CFR Part 483 of the federal nursing home requirements in most areas exceeding requirements in some sections. Since the requirements are analogous, compliance with state regulations that might be achieved as a result of utilizing this remedy should also result in a comparable outcome related to the federal requirements also.

State fines will be assessed at a higher level for facilities identified at subsequent surveys with repetitive violations as an incentive to maintain compliance. In some cases a portion of the state fine may be suspended contingent on maintaining compliance with selected regulatory groupings for a specified period of time. Failure to comply with that provision would result in the collection of the suspended fine as well as assuming a new fine for those violations.

This remedy encourages facilities not to allow deficiencies to recur and discourages initial deficiencies, as facilities understand that they cannot allow deficiencies to occur and avoid a penalty by correction within 30 days.

Funds collected by the state from imposition of a penalty are not applied to maintain operation of a facility pending correction or closure or to costs of relocation or to lost resident funds. Facilities in such a situation are monitored by the state to assure that operations are maintained. The Department requires operator(s) to provide a final account of residents' monies. In addition, Public Health Law Section 2810(3) provides a mechanism for non-interest bearing payments to receivers who take over deficient facilities. The receiver must repay such loans.

TR No. **95-23**  
Supersedes **95-23**

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